Events of Default Process

1. Purpose

Section M8 of the Smart Energy Code (SEC/Code) concerns Events of Default (EoD). This paper sets out each type of EoD and the actions the Panel may take as set out in the Code. The aim is to provide the Panel with the options available to them, rather than prescribing certain routes. Each EoD will need to be treated on a case by case basis, given their unique nature.

2. Types of Event of Default

The SEC sets out eight ways that any Party (other than the DCC) can enter into Event of Default (M8.1). These default types can be categorised into the following:

- **Financial –** the most common way that EoDs occur. These are set out in the SEC (M8.1):

    o **M8.1(c) -** When a Party does not pay the DCC charge. The DCC issues a notice to the Party to make the Charges payable within 3 Working Days (in accordance to Section J2.1, Notification of Payment Failure). If the Party does not pay within the 3 Working Days they will enter EoD.

    o **M8.1(d) -** When a Party does not provide Credit Support when requested from the DCC. The DCC issue a notice to the Party to provide Credit Support (in accordance with J3.14, Breach of Credit Cover Obligations), and if the Party does not provide this within 3 Working Days they will enter EoD.

    o **M8.1(e) -** If the Party does not pay any other charges that it is required to pay under the Code, not specified in M8.1(c) and M8.1(d). The Party will have 5 Working Days to pay the amount once the notice has been raised, after which the Party will enter EoD if payment has not been made.

    o **M8.1(h)** If a Party suffers Insolvency it will become an EoD.

- **Security –** This includes:

    o **M8.1(a) -** Where there is a material breach of Section I1.2. This is when a Party obtains Consumption data without the Appropriate Permissions.

    o **M8.1(b) -** Where a Party has failed to comply with an enforcement letter, for example, from the Information Commissioner relating to Data Protection Legislation (General Data Protection Regulation (GDPR)).

- **Governance –** This includes:

    o **M8.1(f) –** where a Party has made a misrepresentation in its Application form or;

o **M8.1(g) -** where a Party is in material breach of any obligations under the Code.

3.   Actions/Options for the Panel

Section M8.4 sets out seven actions which that the Panel may take in an EoD.

Two of these actions, M8.4(a) and (b) are **compulsory** steps which must be taken:

1.   **M8.4 (a) The Authority must be notified of the Defaulting Party which has entered into an EoD**

2.   **M8.4 (b) The Defaulting Party must be notified that the Event of Default has occurred**

The following sections set out the remaining five actions the Panel may consider, areas to consider, and actions SECAS would undertake on the Panel's behalf.

3.   **Section M8.4(c) - Notify all SEC Parties that an Event of Default has occurred**

Actions required:

- SECAS would inform all SEC Parties of the EoD, using its distribution lists, following the Panel meeting.

- The message would state the Defaulting Party, and which M8.1 provision had been breached by the Defaulting Party, but no further detail.

- When the Defaulting Party are no longer in an EoD, SECAS would issue a notice to all SEC Parties to confirm this.

Areas to consider:

- All SEC Parties will become aware of the EoD, the Defaulting Party and what provision has been breached, although that is the extent of the information which would be provided.

- This action represents good governance and highlights to Parties the seriousness of their actions.

- Ofgem has stated that it is reluctant for the Panel to name Defaulting Parties, due to the impact that it may have on the market/competition. SECAS does however undertake this action regularly and considers that, under the SEC, in isolation this action may not heavily influence other SEC Parties. However, we do recognise that in a wider industry context it may impact commercial behaviours between Parties when the Defaulting Party is exposed.

- If the Default relates to a data or security breach, SECAS believes that all SEC Parties should not be contacted until the issue had been discussed by the Security Sub Committee (SSC). In severe cases, SECAS will contact the SMIRT (Smart Metering Implementation Response Team). The Panel should then act on advice from these groups as to the next step to take regarding communicating to Parties.

4.   **M8.4 (d) - The Defaulting Party is required to give effect to a reasonable remedial action plan to remedy and/or mitigate the effects of the EoD. This must be undertaken in a reasonable timescale**

Actions required:

- SECAS will seek to obtain information from the Defaulting Party; the reasons for the default and potential measures to prevent future occurrences. We will present the information to the Panel. The Panel will consider the adequacy of the plan and request further requirements/actions where necessary.

- SECAS will continue to communicate with the Defaulting Party to understand if the remedial plan is being followed. Evidence to support this will be requested which will be forwarded to the SEC panel as required. Based on the adherence of the Party to their remedial plan, the Panel will make a decision as to whether the Defaulting Party should exit the EoD.

Areas to consider:

- This action represents good governance and highlights to Parties the seriousness of their actions.
- In some situations, a remedial action plan wouldn't be required e.g. their licence has been revoked.
- If the remedial plan is not followed by the Defaulting Party as agreed, they would be non-compliant and considered in default. Even if the original Event of Default has been remedied by the Defaulting Party, if they fail to follow the remedial plan, this can be considered an Event of Default in itself. The Panel could then take further action against the Defaulting Party.

5. M8.4(e) - Suspend one or more of the Defaulting Party's rights

The rights that can be suspended are laid out in M8.5. If this action is chosen by the Panel, the Defaulting Party will be unable to:

a) Vote in Panel Member Elections (under Section C4). This includes the Defaulting Party and each other member of its voting group;
b) Raise new Modification Proposals (under Section D);
c) Influence the appointment of a Change Board Member:
   i) If the Defaulting Party is a Supplier Party, the Change Board member who was appointed by the Voting Group will be suspended.
   ii) If the Defaulting Party is any Party other than a Supplier Party, any requests from the Party to appoint or remove a Change Board member will be ignored by the Secretariat.

Actions required:

- The Panel is able to consult with the Defaulting Party before making its decision on the right(s) that it wishes to suspend. SECAS will seek to obtain as much information about the Defaulting Party as possible and will communicate this to the Panel to aid the decision.

- The Panel can, at any time, re-instate the Party's rights. The SEC does not specify a timeframe over which the rights should be suspended.

Areas to consider:

- If a Modification has been raised by the Defaulting Party prior to suspension of their right, this will not impact the progression of the Modification.

- The action to suspend a Change Board member will only be relevant to Small and Large Suppliers who directly appoint a Change Board member.
- The action to ignore the Defaulting Party (who is not a Supplier) can be requested by the Panel to ensure that SECAS ignore any request by the Defaulting Party to appoint or remove a Change Board member.
- The restriction of the right to raise a Modification Proposal will probably have the most significant impact.

6. **M8.4(f) -The Panel may instruct the DCC to suspend one or more of the Defaulting Party's rights referred to in Section M8.6**

Actions:

- The DCC has one Working Day, after notification from the Panel, to suspend the Defaulting Party's rights. Further clarity is required to understand how the DCC is able to meet this requirement which SECAS will address.

There are five rights that can be suspended under M8.6;

a) *M8.6 (a) – Panel suspends Other Users right to receive Core Communication Services or Local Command Services in the 'Other User Role'.*

Core Communication Services are set out in DUIS (DCC User Interface Services Schedule) but excluding the Enrolment Services and Local Command Services. In essence, these are the Service Requests (SRs) sent between the DCC Users and DCC.

Local Command Services are where Users request Commands are issued via DUIS for local delivery.

These include SRs relating to:

- Read import/export profile data
- Read tariff (primary and secondary)
- Retrieve Daily Consumption Log
- Create, read and delete schedule
- Read device configuration
- Read Auxiliary Load Switch Data
- Read Boost Button Details
- Read/Update inventory
- Join/unjoin service
- Read device log
- Update HAN device log
- Request Customer Identification Number
- Read Firmware Version
- Request WAN Matrix
- Device Pre-notification

SECAS would advise that, if this right was suspended, the Panel should consider removing the Defaulting Other User from the Code, as removing this right in effect stops them functioning in that User Role.

b) *M8.6 (b) – suspend the rights of any User, in any User Role, to receive Core Communication Services or Local Command Services for all User Roles.*

This action is the same as M8.6(a) but includes the Defaulting Party in any User Role.

This action would result in Parties being unable to communicate with the DCC as they will not be able to receive Core Communication Services or Local Command Services. Therefore, unless the default relates to mitigating a security issue, SECAS does not believe this action would be a suitable action to be taken unless removing that Party from the Code.

> c) *M8.6 (c) – to suspend the right of the Defaulting Party to receive any or all Elective Communication Services*

Elective Communication Services enable DCC customers to request tailored alerts and messages to and from the smart meters of their own customers.

It would seem useful to apply this provision if a Party was defaulting on other costs but continuing to pay for and receive elective services.

> d) *M8.6(d) – Panel can suspend the right for the Defaulting Party to Enrol smart meters.*

This would stop a Party from registering SMETS1 meters with the DCC. Any SMETS 2 meters registered within the DCC would not be impacted.

> e) *M8.6(e) - The Panel can suspend the right for the Defaulting Party to request or receive any or all Services other than those referred to elsewhere in this Section M8.6*

This option would not allow any communication between the Defaulting Party and the DCC. Therefore, the Panel may wish to expel the Party, as such restrictions would not allow the Party to continue operating under the SEC.

Areas to consider:

- It is noted that each option (except M8.6(a)) requires Approval from the Authority. SECAS has asked the Authority to provide clarity as to the preferred mechanism in which consent would be given. It has advised that SECAS should provide the Panel with sufficient detail to allow the Authority's Panel representatives to be in a position to give (or withhold) consent at the Panel meeting.

SECAS advises that, if any of the rights set out in M8.6 are chosen to be suspended, the Defaulting Party would be unable to operate, and this would have a significant impact on the end-consumer. It is therefore concluded that the Panel may wish to consider expelling the Defaulting Party from the SEC.

7.   M8.4(g) - Expel the Defaulting Party from this Code.

M8.10 and **M8.11** set out the precedents for which a Party may exit the Code.

Any Party which is obligated by its Energy Licence to be a SEC Party can be expelled. Expulsion can be made by the Panel if they are continuing in an EoD, or a Party can voluntarily exit the Code. In either case, the Panel is required to notify the Authority and all Parties.

SECAS will provide the appropriate paperwork for the Panel to sign, in order to approve the expulsion.

Areas to consider:

- Consideration must be given to the potential impact to the end consumers; they must remain in supply of energy. To ensure consumers remain in supply, appointment of an SoLR is an integral step required to be carried out before the Party is expelled.

- Provided that SoLR has been appointed, expulsion of a Party should have little impact to consumers.

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- In previous cases this action has been undertaken when the Party has had their licence revoked. Upon confirmation from the Authority that a licence has been revoked, SECAS is able to expel the Party from the Code.

- In practice, this action is relatively straightforward to implement. Once the decision has been made for the Party to be expelled, or the Party wishes to cease their licence, the Authority will appoint a SoLR. Once this has been successful, the Authority will revoke the licence. It is upon notification that the licence has been revoked that the Panel will expel the Party. The Panel will inform all Parties of the expulsion and SECAS will update the Party details spreadsheet (publicly available on the SEC website).

4. Disputing the Event of Default

If a Party does not believe that it should be in Event of Default, it must follow the Appeal and Dispute process. For information on the process, and what may constitute as a Dispute, please refer to the Guidance document here.

The majority of Events of Default are due to non-payment of DCC Charges (as per M8.1(c)). The next section will therefore focus on invoice queries.

4.1 How to raise an invoice query

All DCC customer invoice queries should be raised either by email to customerinvoices@smartdcc.co.uk or by phone to the DCC Service Desk on 0207 870 9552.

To note: If you call the Service Desk, you will be required to raise a ticket. The ticket will be passed to the finance team who will be in contact as soon as possible. Please leave your contact details and preferred method of contact.

4.2 Manifest invoice errors

A manifest invoice error will exist where:

a) There is an obvious or easily demonstrable error that does not require extensive investigation.

b) There is a mistake on the face of the calculations.

c) Any data that is legally required on an invoice is omitted or incorrect.

It is an error that is obvious/plain on its face (without investigation). For example, in writing 2+2=5 or a bill for £10 billion instead of £10.

If your Party has a query to a suspected manifest error, please flag this item as urgent. It will be addressed as a priority by the DCC team.

4.3 What constitutes a manifest invoice error?

The following table sets out what does and does not constitute a manifest error. If the DCC does not deem the issue to be a manifest error, the onus is on the SEC Party to ensure the invoice/s is paid under the standard payment terms (five working days from the date when the invoiced was issued).

	Error in	Omission of
	Explicit charges (net or gross) when compared to backing data	Supplier details; company name, registered address, company number & VAT number

Deemed a manifest error		If details are incorrect this will also be deemed a manifest error
	Invoiced volumes, when compared to backing data	Customer company name If details are incorrect this will also be deemed a manifest error
	Unit price compared to the charging statement	Invoice number
	VAT amount	Invoice date/ tax point If details are incorrect this will also be deemed a manifest error
	Rate of VAT charged	DCC bank details If details are incorrect this will also be deemed a manifest error
Not deemed a manifest error		Payment terms or due date on the invoice
		Customer number/ SEC Party ID
		Purchase order (PO) number If details are incorrect this will not be deemed a manifest error
		Omitted invoice narrative or changes to invoice narrative
		Remittance contact information
		Breakdown of charges

Table 1: What is and is not deemed a manifest error

4.4 Queries relating to volumes provided by the Data Service Provider (DSP) or explicit charges (where the invoiced value agrees to the backing data issued to DCC) are not deemed manifest errors. How are manifest invoice errors resolved:

The DCC must agree that a manifest error has occurred. If the DCC agrees that an Invoice contains a manifest error, under J1.6, it will cancel the Invoice (which will not therefore be payable) and promptly issue a replacement Invoice.

The DCC will also take into consideration the type of maniest error, and will agree the solution with the customer, which may include:

- Credit note and revised invoice will be issued

- A partial credit note will be issued for the error

- A revised invoice will be issued

The standard payment terms of five days will re-start from the date the new/ revised invoice is issued.

4.5   Relevant Sections of the SEC under section J Charges:

There are two relevant Sections relating to queries and manifest errors with invoicing, as follows:

- **J1.6** Without prejudice to a Party's right to dispute the Charges in accordance with Section J2 (Payment Default and Disputes), each Party shall pay the amount set out in each Invoice addressed to it by the Due Date for such payment regardless of any such dispute. Nevertheless, where the DCC agrees that an Invoice contains a manifest error, the DCC shall cancel that Invoice (which will not therefore be payable) and promptly issue a replacement Invoice.

- **J1.9** Where: (a) the DCC prepared an Invoice based on its estimate of any information, and the actual information subsequently becomes available to the DCC; (b) there is a change to the information used by the DCC to prepare an Invoice (including following a reconciliation or amendment of Registration Data); or (c) it is agreed (or determined), in accordance with Section J2.4 (Resolution of Payment Default), that there was an error in an Invoice, then the DCC shall include an adjustment in the next Invoice for the relevant Party to be produced thereafter (or, where no Invoice is due to be produced, the DCC shall produce a separate Invoice for such purpose).

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